

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASS DYNAMICS, LLC; BOSTON VAPOR,
LLC; LINDA AND JEFFREY VICK d/b/a VICK'S
VAPE SHOP; JIMBUDDY'S INCORPORATED;
and JERALD MOLLMAN d/b/a J'S VAPOR DEN,

Plaintiffs,

v.

CHARLES D. BAKER, in his official capacity as
GOVERNOR OF THE COMMONWEALTH OF
MASSACHUSETTS; MONICA BHAREL, M.D.,
in her official capacity as DEPARTMENT OF
PUBLIC HEALTH COMMISSIONER; and
COMMONWEALTH OF MASSACHUSETTS,

Defendants.

CIVIL ACTION
NO. 19-cv-12035-IT

AFFIDAVIT OF JULIA E. KOBICK

I, Julia E. Kobick, hereby declare and state the following:

1. I am an Assistant Attorney General at the Massachusetts Office of the Attorney General and am a member in good standing of the Massachusetts bar. I represent Governor Baker and Commissioner Bharel in this matter.

2. I make this declaration in support of the Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Preliminary Injunction. Unless stated otherwise, I have personal knowledge of the facts set forth herein and am competent to testify thereto.

3. Attached as Exhibit A is a true and correct copy of N. Martin, *Why the vaping lung illness crisis is exploding now, according to Boston doctors*, BOSTON GLOBE (Sept. 17, 2019).

4. Attached as Exhibit B is a true and correct copy of B. Abbott, "*The Bells Started Going Off.*" *How Doctors Uncovered the Vaping Crisis*, WALL STREET J. (Sept. 23, 2019).

5. Attached as Exhibit C is a true and correct copy of J. Layden et al., *Pulmonary Illness Related to E-Cigarette Use in Illinois and Wisconsin—Preliminary Report*, NEW ENGLAND J. MEDICINE (Sept. 6, 2019), 10.1056/NEJMe1911614.

6. Attached as Exhibit D is a true and correct copy of H. Knowles & L. Sun, *What we know about the mysterious vaping-linked illness and deaths*, WASH. POST (Sept. 27, 2019).

7. Attached as Exhibit E is a true and correct copy of J. Bosman, *At School, 'Everyone Vapes,' and Adults Are in Crisis Mode*, N.Y. TIMES (Sept. 20, 2019).

8. Attached as Exhibit F is a true and correct copy of D. Christiani, *Vaping-Induced Lung Injury*, NEW ENGLAND J. MEDICINE (Sept. 6, 2019), 10.1056/NEJMe1912032.

9. Attached as Exhibit G is a true and correct copy of Anne Schuchat, M.D., *Written Testimony: House Committee on Oversight & Reform, Subcommittee on Economic and Consumer Policy* (Sept. 24, 2019).

10. Attached as Exhibit H is a true and correct copy of N. Martin, *38 patients now have reported to have mysterious vaping-related lung illness in Mass.*, BOSTON GLOBE (Sept. 16, 2019).

11. Attached as Exhibit I is a true and correct copy of M. Perrone, *US official expects 'hundreds more' cases of vaping illness*, BOSTON GLOBE (Sept. 24, 2019).

12. Attached as Exhibit J is a true and correct copy of Testimony of Norman E. Sharpless, M.D., *House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations* (Sept. 25, 2019).

13. Attached as Exhibit K is a true and correct copy of S. Kaplan et al., *Juul Replaces Its C.E.O. with a Tobacco Executive*, N.Y. TIMES (Sept. 25, 2019).

14. Attached as Exhibit L is a true and correct copy of Lindsey Tucker, *Request for Approval of the Public Health Council for the Commissioner to Take Action to Address the Public Health Emergency of Vaping* (Sept. 24, 2019).

15. Attached as Exhibit M is a true and correct copy of N. Martin, *First vaping-related death reported in Mass.*, BOSTON GLOBE (Oct. 7, 2019).

16. Attached as Exhibit N is a true and correct copy of Charles D. Baker, *Governor's Declaration of Emergency* (Sept. 24, 2019).

17. Attached as Exhibit O is a true and correct copy of Monica Bharel, MD, MPH, *Order of the Commissioner of Public Health Pursuant to the Governor's September 24, 2019 Declaration of a Public Health Emergency* (Sept. 24, 2019).

18. Attached as Exhibit P is a true and correct copy of Transcript of Emergency Meeting of the Public Health Council (Sept. 24, 2019).

19. Attached as Exhibit Q is a true and correct copy of Monica Bharel, MD, MPH, *Order of the Commissioner of Public Health Pursuant to the Governor's September 24, 2019 Declaration of a Public Health Emergency (Temporary Ban on Sale or Display of Vaping Products)* (Sept. 24, 2019).

20. Attached as Exhibit R is a true and correct copy of Monica Bharel, MD, MPH, Memorandum to Local Boards of Health re: Implementation of DPH order regarding vaping products (Sept. 24, 2019).

21. Attached as Exhibit S is a true and correct copy of Monica Bharel, MD, MPH, Letter to Providers (Sept. 24, 2019).

22. Attached as Exhibit T is a true and correct copy of Monica Bharel, MD, MPH, Order of the Commissioner of Public Health Pursuant to the Governor's September 24, 2019 Declaration of a Public Health Emergency (Oct. 3, 2019) ("Implementation Order").

23. Attached as Exhibit U is a true and correct copy of CDC, *Outbreak of Lung Injury Associated with E-Cigarette Use, or Vaping* (Oct. 10, 2019).

24. Attached as Exhibit V is a true and correct copy of D. Grady, *Vaping-Related Illnesses Climb to 805, C.D.C. Says*, N.Y. TIMES (Sept. 26, 2019).

25. Attached as Exhibit W is a true and correct copy of CDC, *Characteristics of a Multistate Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping—United States, 2019*, MORBIDITY AND MORTALITY WEEKLY REPORT, Vol. 68, p. 2 (Sept. 27, 2019).

26. Attached as Exhibit X is a true and correct copy of D. Grady, *Lung Damage from Vaping Resembles Chemical Burns, Report Says*, N.Y. TIMES (Oct. 2, 2019).

27. Attached as Exhibit Y is a true and correct copy of Y. Butt et al., *Pathology of Vaping-Associated Lung Injury*, NEW ENGLAND J. MEDICINE (Oct. 2, 2019).

28. Attached as Exhibit Z is a true and correct copy of S. Papamichael, *E-Liquid Guide: Ingredients, Shelf Life, Nic Strengths and More*, Vaping360.com (Aug. 2, 2018).

29. Attached as Exhibit AA is a true and correct copy of an Order in *Mister E-Liquid LLC v. Governor Gretchen Whitmer*, No. 1:19-cv-00786-RJJ-RSK (W.D. Mich. Sept. 30, 2019).

30. Attached as Exhibit BB is a true and correct copy of W. Bicknell & D. Walsh, Massachusetts Dept. of Public Health, *The First ‘Red Tide’ in Recorded Massachusetts History: Managing an Acute and Unexpected Public Health Emergency*, in PROCEEDINGS OF THE FIRST INTERNATIONAL CONFERENCE ON TOXIC DINOFLAGELLATE BLOOMS 456 (V. LoCicero, ed. 1974).

31. Attached as Exhibit CC is a true and correct copy of DPH, *Department of Public Health Reports First Death from Vaping-Associated Lung Disease to US Centers for Disease Control and Prevention* (Oct. 7, 2019).

32. Attached as Exhibit DD is a true and correct copy of the Affidavit of Catherine M. Brown.

33. Attached as Exhibit EE is a true and correct copy of J. Maloney, *U.S. Army Is Treating Two Soldiers for Vaping-Related Lung Illness*, WALL STREET JOURNAL (Oct. 9, 2019).

34. Attached as Exhibit FF is a true and correct copy of the Affidavit of Ronald O'Connor.

35. Attached as Exhibit GG is a true and correct copy of the Affidavit of Alicia Casey, M.D., submitted in *Vapor Technology Ass'n v. Baker*, No. 1:19-cv-12048-IT (D. Mass.).

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 11th day of October, 2019.



Julia E. Kobick
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that the above affidavit, which I filed electronically through the Court's electronic case filing system on October 11, 2019, will be sent electronically to all parties registered on the Court's electronic filing system.



Julia E. Kobick
Assistant Attorney General